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IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

QUAN YUEN QUONG,

Appellant,

vs.

EDWARD WHITE,
as Commissioner of Immigration for
the Port of San Francisco,

Appellee.

BRIEF FOR APPELLEE

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STATEMENT OF FACT.

Quan Yuei Quong, appellant herein, arrived at the port of San Francisco, California, on the steamship "Nanking" on October 14, 1921 (Ex. A, p. 86), and thereupon made application to enter the United States as the minor son of Quan Sing, alleged to be a domiciled Chinese merchant. He was accompanied by Quan Yuei Len, his alleged brother, who is the appellant in case No. 4110, now pending before this court.

In support of his application to land there was filed the affidavit of the alleged father, Quan Sing, bearing the photographs of the affiant, and Quan Yuie Quong (Ex. A, p. 85D); the affidavit of Quan Hay (Ex. A, p. 85B) and the joint affidavit of T. L. Dickinson and Wm. Moore (Ex. A, p. 85A).

The application of said Quan Yuei Quong was heard and on December 9, 1921, the Commissioner of Immigration at the port of San Francisco made a finding (Ex. A, p. 76) in which he states that he was unable to conclude that the applicant was entitled to enter the United States, as neither the claimed mercantile status of the alleged father nor the existence of the claimed relationship had been satisfactorily established. The finding was not final, but allowed ten days for the production of additional evidence. Thereafter, on December 13, 1921, the attorneys for the applicant (the present counsel for the appellant herein) advised the Commissioner of Immigration by letter that they had no additional evidence to submit and requested that a final decision be made in the case (Ex. A, p. 78), whereupon, under date of December 15, 1921, the Commissioner of Immigration denied the application to enter. The decision restated the grounds of denial—that neither the mercantile status nor relationship had been satisfactorily established. (Ex. A, p. 80.)

From this action an appeal was taken to the Secretary of Labor, Washington, D. C., and under date

of March 22, 1922, a decision was reached by E. J. Henning, Assistant Secretary of Labor, who held that the mercantile status of the alleged father, Quan Sing, had not been established, thus disposing of the appeal on this single issue. (Ex. A, pp. 99-100.)

Thereafter, on April 21, 1922, a petition for writ of habeas corpus (Tr. 3) and order to show cause (Tr. 9) were filed in the District Court.

On July 15, 1922, a demurrer to the said petition was filed (Tr. 10) together with respondent's exhibits, "A," "B" and "C," and the matter argued and submitted.

On July 19, 1922, the demurrer was overruled and writ was issued (Tr. 14).

Thereafter, July 22, 1922, return was made to the writ (Tr. 17), whereupon the Court, on motion of the United States Attorney, directed that the writ heretofore issued be made not final, but conditional, providing the Department passed upon the question of relationship within thirty days from July 22, 1922.

Within the thirty day period, to wit, on August 3, 1922, a finding was made by Robe Carl White, Second Assistant Secretary of Labor, holding that neither the relationship nor the mercantile status claims had been established. (Ex. A, p. 126.)

On September 23, 1922, the case was argued and submitted to the court and on February 12, 1923,

the court ordered the writ dismissed and the petitioner remanded (Tr. 22), from which order and judgment of the District Court this appeal is taken.

ARGUMENT.

The petition alleges and it is assigned as error that the immigration officials denied the detained the fair hearing and consideration to which he was entitled under the law.

When the applicants Quan Yuei Quong and Quan Yuei Len presented themselves at the port of entry they were required to establish, to the satisfaction of the immigration authorities, first that they were the minor sons of the Chinese claiming to be their father, and secondly, that the father was a Chinese of the exempt class, to wit, a merchant. Having made such proof, the applicants would have been entitled to enter the United States.

United States v. Mrs. Gue Lim, 176 U. S. 459.

As to the claim of relationship, it appears that the alleged father of the applicants, Quan Sing, also known by the names of Quan Eng Coon and Quan Chin Bui, first came to the United States in the year K. S. 7 (1881), at which time he was twenty-one years old. In December, 1902, he went to China and returned to this country in September, 1904, so that he was in China at the most twenty months. He claims that he was married in January, 1903; that his first son, Quan Yuei Len, was born in November, 1903, and that his second son, Quan Yuei

Quong, was born in January, 1905. Quan Sing has made no subsequent trip to China and it will be noted that he left China when one alleged child was less than one year old and that the second alleged child was born after his departure. The alleged father having left China twenty years ago, can furnish little information to the immigration officials which, when used as a basis for questioning the applicants disclosed a knowledge of circumstances which can be said to be persuasive as to the existence of the relationship. Questions as to kinship, the physical features of the village and similar matters were asked following the usual course in these cases.

There is one discrepancy between the statement of the alleged father and those of the applicants, which it is believed would not exist were the relationship as claimed. The alleged father testified that the applicants' maternal grandfather, one Jew Jin Haw, is living; that his son, Quan Yuei Len, wrote him last year to this effect. (Ex A, p. 65.) The two applicants are in agreement, however, that this person, Jew Jin Haw, died about twelve or thirteen years ago. (Ex A, pp. 12 and 16.)

Quan Hay, the manager of the firm in which it is claimed that the alleged father is a member, appeared as a witness for the applicants. He claims that on a recent visit to China he took $200.00 given to him by Quan Sing to the latter's family in China and he claims to have seen the applicants at their

village when he called there. In this way, he states, he got to know of the relationship, but his testimony is weakened by discrepancies. He testifies that the applicants were at their house in the village when he arrived (Ex. A, p. 37), while the applicants state that they were at school at the time and that Quan Hay was at their house when they got there. (Ex. A, pp. 10 and 14.)

Quan Hay and the applicants came to the United States on the same steamer. He testifies that, when the applicants heard that he was about to return to the United States, the applicants met him in Chuck Hom market and went with him to Hongkong. (Ex. A, pp. 34 and 35.) The applicants state that they met Quan Hay in Hongkong and make no mention of having met him in Chuck Hom. (Ex. A, pp. 10 and 13.) Quan Hay, in the estimation of the immigration authorities, is discredited by the discrepancies mentioned.

The courts have repeatedly held that the determination of questions of fact is exclusively for the immigration authorities. In this case, in dismissing the writ of habeas corpus, His Honor, Judge Dooling, said:

> "This is one of those cases in which the Bureau having found the facts against the applicant, such finding is conclusive on the Court, as the finding is not without support. The writ of habeas corpus is dismissed and the petitioner remanded."

In the case of *Jeung Bock Hong v. White,* 258 Fed. 23, decided by this Honorable Court, it appears that the most important of the discrepancies in the record was the statement by one applicant that their house in China was three feet from the next house, while the other applicant stated that the houses touched.

The Court in that case said:

> "The discrepancies in the testimony appear to be unimportant; but if, taking them altogether, the evidence in support of the petitioners' right to land and enter the United States was so impaired as to render it unsatisfactory, the court is not authorized to reverse the conclusion."

The reasoning in the case of *Soo Hoo Doo Hon v. Johnson,* 281 Fed. 870, applies with particular force to the present case. The Court said:

> "Proof that fabricated testimony has been introduced does much more than merely discredit the witness involved; it put the whole case of the party on whose behalf it was offered under suspicion. In this instance the immigration tribunals were quite within their rights in rejecting the testimony of both the applicant and his alleged father. It does not seem to me that under the circumstances disclosed they acted arbitrarily and unfairly in refusing to accept the testimony of the other witnesses as establishing the applicant's parentage as claimed by him."

The principal involved is well settled by the decisions and extended discussion would seem to be unnecessary. Cases in point, however, are as follows: *Louie Share Gan v. White,* 258 Fed 798; *Lee Ah Yin v. United States,* 116 Fed. 614; *Chang Sim v. White,* 277 Fed. 765; *Chin Yow v. United States,* 208 U. S. 8.

As to the mercantile status claimed by Quan Sing, his claim essentially is as follows: That he is a member of the firm of Quan Tsue Lung Company, which firm is located at 22 Plaza Street, Los Angeles, California; that he became a member of said firm in February or March, 1918; that said firm is conducted as a partnership, there being seventeen partners in all; thirteen active and four silent members; that Quan Sing's interest in the firm amounts to $500; that he is a salesman for said firm, which deals in Chinese groceries. Two Chinese witnesses appeared and testified for the alleged father, namely Chew Yuen and Quan Hay, who state that they are bookkeeper and manager respectively of the said firm. Three persons, other than Chinese, also testified, these being T. L. Dickinson, Herbert E. Schultz and Ray Olds.

Under Section 2 of the act of November 3, 1893, the term "merchant" is defined as follows:

> "The term 'merchant' as employed herein and in acts to which this is amendatory shall have the following meaning and none other: A merchant is a person engaged in the buying

> and selling of merchandise, at a fixed place of business, which business is conducted in his name and who during the time he claims to be engaged as a merchant does not engage in the performance of any manual labor except such as is necessary in the conduct of his business as such merchant * * *".

The Supreme Court, in the case of *Tom Hong v. United States*, 193 U. S. 517, commented on the act in part as follows:

> "The purpose of the law is to prevent those who have no real interest in the business from making fraudulent claims to the benefits of the act as merchants. The interest in the business must be substantial and real and in the name of the person claiming to own it, but the partner's name need not necessarily appear in the firm style when carried on, as is usual among Chinese, under a company name, which does not include the individual names. The main purpose is to require the person to be a bona fide merchant, having in his own name and right an interest in a real mercantile business."

The Immigration authorities heard the witnesses and made an investigation into the bona fides of the alleged father's claim to membership in the firm. Certain inconsistencies and discrepancies occurred during the investigation which resulted in the finding that the alleged father's claim to mercantile status was not real but was a pretended one.

It appears that on December 5, 1902, the alleged father, Quan Sing, testified before the immigration

authorities at Los Angeles, in connection with an application filed by him to depart and return to this country as a Chinese laborer. (Ex. B, p. 6.)

The testimony then given by Quan Sing and his witnesses was directed toward showing that Quan Sing, as a registered Chinese laborer, was the owner of property or had debts due of not less than $1,000, such showing being required under the statute in the cases of Chinese laborers.

The noteworthy portions of the testimony then given are as follows:

"Q. What is your name?

A. Quan Sing.

* * * *

Q. What have you been doing since you first came?

A. Been cooking and laundry work.

Q. What property have you accumulated?

A. I have property in Quan Tsue Lung and laundry on Buena Vista Street, besides a little money, and I don't want to count that.

Q. What is the business of Quan Tsue Lung?

A. Grocery and general merchandise.

Q. How much interest have you in the store of Quan Tsue Lung?

A. $500.

Q. How long have you had $500 invested in that store?

A. Ten years.

Q. Have you been employed about the store?

A. No.

Q. What have you been doing during the last year?

A. Cooking, and start laundry, too."

(Ex. B, pp. 5 and 6.)

At the same hearing Quan Chow, who represented himself as the manager of the Quan Tsue Lung & Co., testified in part as follows:

"Q. What is your name?

A. Quan Chow.

* * * *

Q. How many partners have you in the firm of Quan Tsue Lung?

A. Ten stockholders.

Q. How many partners?

A. That is ten partners.

Q. What are the names of your partners?

A. Quan Hay, Quan Chew, Quon Wing Quan, Quan Seung Wo, Quan Wo, Quan Sam, *Quan Sing,* Lung Ark, Quan Sing Fong, Quan Wing.

Q. How much interest has Quan Sing?

A. $500.

Q. How long has Quan Chow owned an interest in the store?

A. Nearly thirteen years.

Q. How long has Quan Hay owned an interest in the store?

A. Longer than I have.

Q. How long has Quan Sing?

A. Ten years.

Q. Has Quan Sing owned an interest in the Quan Tsue Lung Co. continually for ten years?

A. Yes, sir." (Ex. B, p. 4.)

In September, 1904, Quan Sing returned from his visit to China and he again testified as follows:

"Q. What is your name?

A. Quan Sing.

* * * *

Q. What statements did you make when you applied for your return certificate as to your family or debts or property qualifications?

A. I have debts owing me in this country.

* * * *

Q. Who owes you this money?

A. The firm of Quong Tui Lung & Co. of Los Angeles owes me $500 and the Quong Yick Laundry of Los Angeles owes me $500.

* * * *

Q. What person in the Quong Yick laundry owes you this money?

A. The laundry does not owe me any money; I meant to say that the laundry is owned by two of us, my partner is Quan Quock Kee; my share in the laundry is $500.

Q. Did you and Quan Quock Kee open up that laundry together?

A. Yes.

Q. When?

A. It was opened up about a year and a half prior to my return to China.

* * * *

Q. What does Quan Tui Lung do?

A. They are in the general merchandise and tea business at 22 South Plaza, Los Angeles.

Q. When did you let that firm have the $500?

A. In K. S. 16th or 17th (1890-1891).

Q. Where were you working when you let this firm have the $500?

A. I was employed at the Santa Monica Hotel; I think I was employed there at the time, but I am not certain.

Q. Did you let them have this money all at one time?

A. All in one sum.

Q. That has been 12 or 13 years ago?

A. I didn't lend the $500 to the firm at all; *I have an interest in that firm of $500.*

Q. When did you purchase the $500 interest in the firm?

A. In K. S. 16th year.

Q. What month?

A. I don't remember what month it was?

Q. To whom did you hand over that $500.

A. Quan Hei was the manager at the time; I handed the money to him.

Q. Did you buy somebody's interest or did you join as an additional partner?

A. I didn't buy any person's share in the business. . .

* * * *

Q. Does your name appear on the partnership list of that firm on file in the Chinese Bureau?

A. *Yes, it is on the list.*"

(Ex. B, pp. 15 and 16.)

In the present case Quan Sing testified as follows:

Q. How long have you lived in Los Angeles?

A. About 40 years.

Q. You were a laundryman here for a number of years, were you not?

A. Yes, in a company in Santa Monica.

Q. Haven't you been a laundryman here on Buena Vista Street, here in Los Angeles?

A. Not in this city.

Q. You have been a cook in this city, haven't you?

A. Yes.

Q. When you went to China in 1902 didn't you claim that you and another Chinaman conducted a laundry on Buena Vista Street in Los Angeles?

A. No.

Q. What was the name of that laundry? Wasn't it called the Quan Yick laundry?

A. I was not a member of the laundry, the laundry had my money, I went as a laborer.

Q. Didn't you say in the examination at that time that you and Quan Kee were the only men who conducted that laundry?

A. I do not remember now, it is more than 20 years ago.

Q. You do not remember about the transaction at all, then, do you?

A. No, I do not remember.

Q. If you had told the truth at that time you would remember, would you not?

A. No, I had my money there, I was not a partner in that business.

Q. Upon what ground did you base your right to visit China as a laborer at that time?

A. The Quan Yick laundry owed me money, $500, and the Quan Suey Lung Co. owed me $500.

Q. Which member of the firm owed you the money?

A. Quan Jew.

Q. What did he borrow the money from you for?

A. To get some goods with the money.

Q. Then you were not a member of that company when you went to China?

A. No, not a member of it.

Q. Well, why did you say that you became a member of that company then 10 years before you went to China on that occasion?

A. I did not say that.

* * * *

Q. What was the last place you worked at as a laborer, laundryman or cook, when and where was it?

A. The last laboring work I did was in a laundry, the Quan Yick laundry located near the Mexican town this city.

Q. When did you quit working there?

A. About K. S. 28, when I went to China.

* * * *

Q. When did you come to the Quan Suey Lung Co.?

A. C. R. 7 (1918).

Q. Did you go to work with the company in C. R. 7?

A. I worked there and became a member there?

Q. When did you become a member?

A. C. R. 7-1, I do not remember the day (February or March, 1918).

Q. How much did you have in the company?

A. $500.

Q. Whose interest did you buy?

A. No ones.

* * * *

Q. Did you pay for that $500 share in this Quan Suey Lung Co.?

A. Yes.

Q. Whom did you give the money to?

A. To Quan Hay."

(Ex. A, pp. 57, 58 and 59.)

Quan Hay was questioned in the present case as follows:

"Q. When did Quan Sing become a partner in your firm?

A. C. R. 7, I think the first month.

Q. Was he ever a partner in your firm before that?

A. No.

Q. Do you remember when Quan Sing went to China in 1902?

A. Quan Sing went to China just one boat ahead of my return in K. S. 28 (1902).

Q. At that time he claimed that he had a $500 interest in that firm, why did he make such a claim if you say he never joined the firm until 1918?

A. He didn't have any share there, he deposited some money there, all right.

Q. How much did he deposit?

A. I was in China at that time, but my partner told me he deposited that money. He left the United States for China one boat before I returned to the United States.

* * * *

Q. When did Quan Sing pay for his share?

A. C. R. 7-1.

Q. Is that as near as you can come to it?

A. Yes.

Q. How did he pay?

A. Delivered the money to me."

(Ex. A, p. 40.)

From the above testimony it is clear that in 1902 and 1904 Quan Sing and Quan Chow recited a circumstantial story as to how and when the former became a member of the Quan Tsue Lung Company. Quan Sing, it is shown, was particularly concerned in his testimony in making it clear that he had an interest in the store and that the money, which he claims he paid to Quan Hay, was advanced to the firm not as a loan but as an investment in the business, whereby he became a partner in the firm.

If his connection with the Quan Tsue Lung Company commenced in 1892 and continued for ten years from that time as he said it did and he is now a member of the same store, his membership with the store would have been a matter of many years' standing. Yet his present testimony is that his membership dates from February or March, 1918, and that in 1902 he was not a member of the firm and had merely loaned the money mentioned in his 1902 testimony to Quan Jew, who used the money for the purpose of buying goods.

His 1902 testimony, confirmed by his 1904 testimony, when viewed in the light of his present statements, is susceptible of but one reasonable explanation. The conclusion, fairly to be reached, is that his former testimony and that of Quan Chow was false and that there was an agreed plan to offer testimony that Quan Sing was a member of the firm and was carried on the books and partnership list as a member to support said statements.

The testimony shows that on two occasions he testified that he has paid $500 for an interest in the firm and that both times the payment was made to Quan Hay. If his 1902 and 1904 testimony was the truth no second transaction would be necessary to attain the same end, namely, membership in the firm. It is contended that the immigration authorities had sufficient ground to doubt the bona fides of the present claim of Quan Sing after consideration of the testimony hereinabove set forth.

In the present record it appears that the testimony of the three witnesses other than Chinese, who appeared in behalf of Quan Sing, fail to show that the latter was actively engaged in the business of the concern. Herbert E. Schultz, one of the witnesses, claims to have seen Quan Sing around the store for the past two years, but has never transacted any business with him nor has he seen him perform any active duties at the store.

Another witness, T. L. Dickinson, an expressman, testified that he had seen Quan Sing in the store and had been paid by him. However, when shown a number of photographs of Chinese, among which was a photograph of Quan Sing, he picked out a photograph of a Chinese known as Quan Chew Yeun as that of Quan Sing. The witness when shown photographs of two Chinese for whom he had testified within the previous three years, was unable to state where he had seen them or to give their names. He also failed to identify the photographs of several other alleged members of the firm.

A third witness, Ray Olds, who is also in the express business, claims to have seen Quan Sing around the store for the past two years and to have been paid by him for hauling. This witness has a poor knowledge of the firm and knows only about three of the alleged partners. He claims to have called at the store only about five or six times during the previous year, but states that he saw Quan Sing there almost every day, Olds' stand, where he waits for transfer trade, apparently being very close to the store.

It is clear that under the Act of November 3, 1893, Congress intended that claims to mercantile status made by Chinese should not rest on the testimony of Chinese alone, hence the provision under the act requiring in such cases the establishment of such claims by the testimony of two credible witnesses other than Chinese. In this case the immigration authorities found—rightly, it is contended—that the testimony offered by the witnesses was unsatisfactory.

In certain other aspects the case was regarded unfavorably by the immigration authorities. The following comment is made in the report of the Chairman of the Board of Review. (Ex. A, p. 100.)

> "The business in question is located in Los Angeles, Cal. It is pictured as being a combination wholesale and retail business, although it might be mentioned that the bookkeeper and at least one of the witnesses appear to disagree

as to the retail feature of the company. It is alleged that there are seventeen members in this firm, thirteen active and four silent. One Quan Hay is the manager and one Quan Chew Yuen is given as the bookkeeper for the company. The business is stated to be capitalized at $9,000, Quan Hay, the manager, having $1,000 interest and the other sixteen partners having a $500 interest. The store in question is said to be 16x14 and 16x16 feet in width and breadth. It is claimed that the firm does about a $30,000 annual business. Accepting the sum of $30,000 as being a reasonable estimate of the firm's annual business, this would mean that the entire firm does a weekly business of $575, which, reduced further, would show a weekly business of $34 for each member of the firm, further reducing this to the average daily business for each member of the firm would show daily gross sales of about $5.60. * * * It is difficult to understand why such a comparatively small business should require thirteen active and four silent partners, it appearing that the number of alleged partners is entirely out of proportion to the amount of business transacted."

The physical aspect of the store, the amount of business transacted, the earnings of the individual members, the number of partners engaged in the transaction of the business, were all matters pertinent to the issue in the case, in support of which we again refer to the decision of the Supreme Court in the case of *Tom Hong v. United States, supra.*

"The main purpose (of the act) is to require the person to be a *bona fide merchant,* having in

> his own name and right an interest in a *REAL* mercantile business."

It is alleged in appellant's brief that one of the immigration officers who took testimony in the case was biased and prejudiced and conducted the examination in a manner which prevented a fair and impartial hearing. It is said that the report of this officer "evidences an indefinable and indescribable prejudice against the applicant's father and his firm."

The immigration officers charged with the duty of enforcing the Chinese-exclusion acts, in order to arrive at the truth are required to make a thorough examination into the facts of the cases presented. A mere superficial examination will not get at the truth in these cases. Usually the persons appearing before the officers are unknown to them and by the very nature of the case it must be upon the statements made by applicants and their witnesses that the officer's conclusions are reached. As was said in the case of *Lee Sing Far v. United States,* 94 Fed. 834:

> "The only protection to the government in the enforcement of the exclusion act in this character of cases lies in the cross-examination of each witness on behalf of the petitioner, whereby the 'crucial test' of his credibility may be applied. It may or may not always be successful, but it has often been said to be one of the most efficacious tests which the law has devised for the discovery of truth."

The necessity of thoroughness in the examination of Chinese with respect to claims such as are presented in the instant case is obvious from the very nature of the cases. His Honor Judge Woods, in his dissenting opinion in the case of *Wong Yee Toon v. Stump,* 233 Fed 194, at page 199 says:

> "Evidently the immigrant, especially a Chinaman, has great advantage of the government with respect to direct evidence. If he wishes to come under false claims, his oath and that of his relations and friends can rarely, if ever, be met by direct contradiction. The government will hardly ever be able to obtain direct evidence of paternity or other vital matters, and must of necessity rely on contradictions, inconsistencies, and other indirect and circumstantial evidence, if the law is to be enforced. The presumption is that immigration officers will not be arbitrary and unfair, and that they are selected for their intelligence and acquaintance with the manners and customs of the races with whose members they have to deal. They see and hear the witnesses, and may judge of their credibility by their manner and by their racial characteristics and habits. These considerations are suggestive of the greatest caution on the part of the courts in deciding that an immigrant is entitled to remain in this country, contrary to the findings of fact of the immigration officers making the examination, when findings have been subjected to the scrutiny and have received the approval of higher officers, including the Secretary of Labor."

As an instance of the harassing methods used by the immigration officer, counsel cites the following:

> "Q. Are you prepared to furnish a Chinese partnership list in quintuplicate, and its translation in octuplicate?
>
> A. Yes."

The matter is very simply explained. It appears that in these cases various copies of the records must be made. Copies are retained at the place where the investigation is made and also at the port of entry. Additional copies are made for the use of the Secretary on appeal, and copies are loaned to the attorney of record for use in perfecting the appeal. The number of copies made in any case is governed by legitimate needs and is not a matter of caprice on the part of the examining officer, as counsel implies.

Examination of the record will show, it is contended, that while the examining officer was strict he was not unfair.

The charge of unfairness is vague and indefinite and general rather than specific. The Supreme Court, in the case of *Low Wah Suey v. Backus,* 225 U. S. 460, sets forth the guiding rule in such cases in the following language:

> "In order to successfully attack by judicial proceedings the conclusions and orders made upon such hearings, it must be shown that the proceedings were *manifestly* unfair, that the

> action of the executive officers were such as to prevent a fair investigation or there was a manifest abuse of discretion committed to them by the statute."

In this case it is contended that there was no unfairness, either on the part of the examining officer complained of, nor otherwise—certainly the record fails to show that the hearing was manifestly unfair.

It is further contended by counsel that the immigration authorities acted arbitrarily and abused their discretion in refusing to reopen the case for the consideration of further evidence. Before the case was closed it will be noted that an opportunity was given to submit further evidence (Ex. A, p. 77), and ten days was allowed for this purpose. The attorneys for the applicant, when advised of this action, expressly stated that they had no additional evidence to submit. (Ex. A, p. 78). Their later application to reopen the case was considered by the immigration authorities but was refused. (Ex. A, p. 115). This was clearly within the discretion of the administrative officers. *Toku Sakai v. United States,* 239 Fed 492. Chinese are not entitled to repeated hearings of the facts.

U. S. v. Ng Young, 126 Fed. 425.

The action of the District Court, wherein it directed that the writ issue conditional upon further consideration and action in the case by the Immigra-

tion authorities with respect to the relationship feature is clearly within the power of the Court.

United States v. Petkos, 214 Fed. 978;
Ex parte Chin Loy You, 223 Fed. 833;
Lee Wong Him v. Mayo, 240 Fed. 368;
White v. Wong Quen Luck, 243 Fed. 547.
Ex parte Lalime, 244 Fed. 279;
Jeung Quey How v. White, 254 Fed. 618.

It is respectfully submitted that the applicant was given the hearing to which he was entitled under the law; that he was afforded full and ample opportunity to present witnesses; that there was no unfairness on the part of the immigration authorities in the proceedings and that the decision reached was warranted by the evidence and that the decision of the lower court so finding should be sustained.

Respectfully submitted,

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Dated: San Francisco, March 10, 1924.